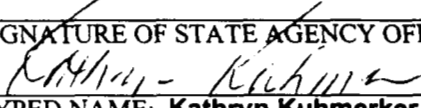
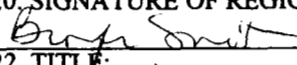


TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 03-36	2. STATE New York
FOR: HEALTH CARE FINANCING ADMINISTRATION		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
		4. PROPOSED EFFECTIVE DATE January 1, 2003	
5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR Part 447		7. FEDERAL BUDGET IMPACT: a. FFY 2002-2003 \$ -283,875. b. FFY 2003-2004 \$ -378,500.	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-D, Part II, Page 1, 2, 3, 4, 4a, 4b, 5, 6, 7, 8, 10, 11, 11a, 12, 13, 16, 17, 17a, 18, 19, and 35		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.19-D, Part II, Page 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 16, 17, 18, 19, and 35 (Attachment 4.19-D, Part II, Page 4a, 4b, 11a, and 17a, are NEW pages)	
10. SUBJECT OF AMENDMENT: Intermediate Care Facilities for the Developmentally Disabled (ICF/DD)			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input checked="" type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237	
13. TYPED NAME: Kathryn Kuhmerker			
14. TITLE: Deputy Commissioner Department of Health			
15. DATE SUBMITTED: March 31, 2003			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: APR - 1 2003		18. DATE APPROVED: MAR 11 2004	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: JAN - 1 2003		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Charlene Brown		22. TITLE: Deputy Director, CMSO	
23. REMARKS:			

Rate setting and financial reporting for intermediate care facilities for persons with developmental disabilities (ICF/DD). This section is effective [January 1, 1999] January 1, 2003 for under thirty one bed non-state operated facilities classified as Region II and III facilities, [April 1, 1999] April 1, 2003 for all under thirty one bed State operated facilities, and [July 1, 1999] July 1, 2003 for under thirty one bed non-state operated facilities classified as Region I facilities.

(a) Definitions applicable to this section.

- (1) Intermediate Care Facilities for the Developmentally Disabled. For the purpose of this section: "Provider" shall mean the individual, corporation, partnership or other organization to which the OMRDD has issued an operating certificate, to operate a facility, or a State owned developmental center and to which the New York State Department of Health has issued a Medicaid provider agreement for such facility. For the purpose of this section: "Facility" shall mean
 - (i)(a) that program and site for which OMRDD has issued an operating certificate to operate as an intermediate care facility for the developmentally disabled, or
 - (b) a developmental center which consists of institutional beds, including those beds in Small Residential Units operated by a Developmental Disabilities Services Office (DDSO), but excluding those beds in Small Residential Units operated by a DDSO whose developmental center has closed or is scheduled to close, and
 - (ii) for which the New York State Department of Health has issued a Medicaid provider agreement.
- (2) For the purposes of this section:
 - (i) A Region I facility is a facility which is located in Region I (other than a facility located in Region I which has been designated or elected to a Region II and III reporting cycle), or a facility which is located in Region II or III which has been designated or elected to a Region I reporting cycle in accordance with 14 NYCRR subpart 635-4.
 - (ii) A Region II or III facility is a facility which is located in Region II or III (other than a facility located in Region II or III which has been designated or elected to a Region I reporting cycle), or a facility which is located in Region I which has been designated or elected to a Region II or III reporting cycle in accordance with 14 NYCRR subpart 635-4.
- (3) Region - The geographic regions are:

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- (i) Region I (NYC) is New York City and includes the counties of New York, Bronx, Kings, Queens and Richmond.
 - (ii) Region II (NYC Suburban) includes the counties of Putnam, Rockland, Nassau, Suffolk and Westchester.
 - (iii) Region III (Upstate New York) includes all other counties in New York State.
- (4) Newly certified facility is an under thirty-one bed facility which has been in operation for less than [five] four full years as of the start of a rate cycle, or an over thirty bed facility which has been in operation for less than two full years as of the start of a rate cycle.
- (5) Operating costs are allowable costs which are non-capital in nature and which are allowable as specified in paragraph s (f)(1) and (2) of this section and subdivision (j) General Rules for Capital Costs and Costs of Related Party Transactions, and subdivision (k) Glossary. For purposes of this section, this includes day treatment, day service, transportation and regional FTE add-ons.
- (6) Capital Costs are allowable costs as specified in paragraph (f)(1) and (3) of this section and subdivision (j) General Rules for Capital Costs and Costs of Related Party Transactions, and subdivision (k) Glossary.
- (7) Reimbursable Costs are allowable costs, either operating or capital, adjusted per the application of this section, and prior to the application of the trend factor.
- (8) Total reimbursable costs are reimbursable costs trended, as appropriate, per the application of subdivision (g) of this section.
- (b) Reporting requirements. Each provider shall submit reports in accordance with the requirements of 14 NYCRR subpart 635-4.
- (c) Rate setting.
- (1) Units of service.
 - (i) A unit of service is the unit of measure denoting lodging and services rendered to one consumer between the census-taking hours of the facility on two successive days; the day of admission but not the day of discharge shall be counted. One unit of service shall be counted if the consumer is discharged on the same day the consumer is admitted, providing there was an expectation that the admission would have at least a 24-hour duration.
 - (ii) Reserve bed days determined in accordance with 18 NYCRR section 505.9 and subdivision (i) of this section are units of service.

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(2) Rate cycle.

- (i) For facilities of over thirty beds, the rate cycle is comprised of two twelve month rate periods.
- (ii) For facilities of under thirty-one beds the rate cycle is comprised of [three twelve month rate periods except that the rate cycles beginning January 1, 1999, April 1, 1999 and July 1, 1999 shall consist of four twelve month rate periods] a base period and subsequent period or periods.

[(iii) This rate cycle is divided into a base period and a subsequent period or periods.]

(a) The base period is the first twelve month period of the rate cycle.

(1) The base period for under thirty one bed non-state operated facilities is from January 1 to December 31 for Region II or III facilities. The first base period for non-state operated facilities begins January 1, 1988 for over thirty bed Region II or III facilities. The [first] base period for non-state operated under thirty one bed facilities begins [January 1, 1999] January 1, 2003 for under thirty-one bed Region II or III facilities.

(2) The base period for under thirty one bed non-state operated facilities is from July 1 to June 30 for Region I facilities. The first base period for non-state operated facilities begins July 1, 1988 for over thirty bed Region I facilities[, and July 1, 1999]. The base period for non-state operated facilities begins July 1, 2003 for under thirty-one bed Region I facilities.

(3) For state operated facilities of under 31 beds, regardless of region, the [first] base period shall be [April 1, 1999 to March 31, 2000] April 1, 2003 to March 31, 2004 and shall remain April 1 to March 31 for every rate cycle thereafter. For state operated facilities of more than 30 beds and developmental centers, regardless of region, the first base period shall be April 1, 1988 to March 31, 1989 and shall remain April 1 to March 31 for every rate cycle thereafter.

(b) The subsequent period for over thirty bed facilities is the second twelve month period of the rate cycle. The subsequent periods for under thirty-one bed facilities are the [second and third] subsequent twelve month periods of the rate cycle. [For the rate cycles beginning January 1, 1999, April 1, 1999 and July 1, 1999 there shall be additional

subsequent period of January 1, 2002 to December 31, 2002; April 1, 2002 to March 31, 2003; and July 1, 2002 to June 30, 2003 for under 31 bed facilities.]

- (1) The subsequent period for non-state operated facilities is from January 1 to December 31 for Region II or III facilities. The first subsequent period begins January 1, 1989 for non-state operated over thirty bed Region II or III facilities. The first subsequent period for non-state operated facilities begins [January 1, 2000] January 1, 2004 for under thirty-one bed Region II or III facilities.
 - (2) The subsequent period for non-state operated facilities is from July 1 to June 30 for Region I facilities. The first subsequent period for non-state operated facilities begins July 1, 1989 for over thirty bed Region I facilities. The first subsequent period for non-state operated facilities begins [July 1, 2000] July 1, 2004 for under thirty-one bed Region I facilities.
 - (3) For state operated facilities of less than 31 beds, regardless of region, the first subsequent period begins [April 1, 2000] April 1, 2004 and shall remain April to March for every rate cycle thereafter. For developmental centers and state operated facilities over 30 beds, regardless of region, the first subsequent period shall be April 1, 1989 to March 31, 1990 and shall remain April 1 to March 31 for every rate cycle thereafter.
- (3) Computation of Rates (General).
- (i) All rates shall not be final unless approved by the Director of the Division of the Budget.
 - (ii) The commissioner may make adjustments to rates calculated in accordance with this section based upon the allowability of costs as determined by subdivision (f) of this section and subdivision (j) General Rules for Capital Costs and Costs of Related Party Transactions, and subdivision (k) Glossary. In addition, costs may be reallocated and adjusted following a desk audit of cost reports.

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- (a) The desk audit will examine the allocation of costs and OMRDD will reallocate unidentified and improperly classified costs, if any, to appropriate cost categories.
- (b) The desk audit will examine base year costs against both the prior and subsequent years' costs. OMRDD will determine if costs are recurring, or are atypical and/or expended only in the base year.
- (1) If OMRDD determines that base year costs for a facility are recurring, for the base periods beginning January 1, 2003, April 1, 2003 or July 1, 2003, the methodology described in this section will apply.
- (2) If OMRDD determines that base year costs for a facility are atypical and/or were expended only in the base year, OMRDD will expand the desk audit. OMRDD may make adjustments to base year costs so that such costs represent typical and recurring costs.
- (3) For a facility whose base year costs are subject to an expanded desk audit per subclause (b)(2) of this subparagraph, OMRDD shall continue the rate in effect on December 31, 2002, March 31, 2003 or June 30, 2003, and, if applicable, trended to 2003 or 2003-2004 dollars, until OMRDD completes the desk audit. For Region II and II facilities, OMRDD shall notify the provider by December 1, 2002 if the December 31, 2002 rate shall continue. For Region I facilities, OMRDD shall notify the provider by June 1, 2003 if the June 30, 2003 rate shall continue. For all State operated facilities, OMRDD shall notify the provider by March 1, 2003 if the March 31, 2003 rate shall continue. Upon OMRDD's completion of the expanded desk audit, for the base periods beginning January 1, 2003, April 1, 2003 or July 1, 2003, the methodology described in this section will apply.

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(c) Administrative review of expanded desk audits shall be in accordance with subdivision 635-4.6(h) of 14 NYCRR

[(ii)](iii) The commissioner may also make adjustments based on errors which occurred in the computation of the rate, changes in certified capacity, changes in payments for real property which have the prior approval of the commissioner and the Director of the Division of the Budget, or changes based upon previously determined final audit findings. If a facility has undergone a change in certified capacity, the commissioner may:

- (a) request the facility to submit a budget report subject to 14 NYCRR subpart 635-4; or
- (b) request the facility to submit incremental/decremental cost data which is associated with the capacity change.
- (c) Utilizing the submitted incremental/decremental data or budget report, OMRDD shall make the appropriate upward or downward adjustment in a facility's rate; or
- (d) continue the then existing rate for the remainder of the subject rate period in those instances where the commissioner has determined that the facility is operating at a loss for the rate period in question and adjusting the current rate would further increase such loss, or the facility is operating at a surplus for the rate period in question and adjusting the rate would further increase such surplus.

[(iii)] (iv) Rate adjustments as described in subparagraph (ii) of this paragraph will be limited to those adjustments which will result in an annual increase or decrease in reimbursement of \$1,000 or more.

[(iv)] (v) Notwithstanding any other provisions of this section, for over thirty bed facilities the reimbursable operating costs contained in the rates shall be computed as follows.

(a) For over thirty bed facilities other than developmental centers, OMRDD shall determine the total reimbursable operating costs (with the exception of education and related service costs, sheltered workshop services, and day training services) included in the payment rate in effect on December 31, March 31 or June 30 of the immediately preceding rate period applicable to that facility.

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The dollars for sheltered workshop and day training services shall be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised sheltered work and day training costs will be increased by the trend factor calculated in subdivision (g) of this section and may be adjusted for appropriate appeals. Education and related services will be updated in accordance with clause (4)(ix)[(c)] (f) of this subdivision. To determine the capital cost portion of the subsequent period rate, OMRDD shall review the component relating to capital costs for substantial material changes and, if said changes conform to the requirements of paragraphs (f)(1) and (3) of this section and subdivision (j) General Rules for Capital Costs and Costs of Related Party Transactions, and subdivision (k) Glossary, make corresponding adjustments in computing the subsequent period rate.

- (b)(i) For developmental centers, the statewide average rate for the period from April 1 to March 31 shall be calculated as follows. The total reimbursable operating costs contained in the payment rate in effect on the preceding March 31, with the exception of education and related service costs, after the adjustment for the latest available

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projected number of client days, shall be increased by the trend factor described in subdivision (g) and increased by an amount for education and related services in accordance with clause 4(ix)[(c)] (f).

In addition, if substantial, material changes that conform to the requirements of subdivision (h) are projected for the rate year these changes may be incorporated into the computation of the April 1 to March 31 period rate without an appeal being filed. OMRDD shall perform a rate year end volume variance adjustment to the April 1 to March 31 period rate for developmental centers by taking into account recalculated operating costs based upon a fixed to variable ratio of 64 percent fixed/36 percent variable, and actual client days.

(ii) In addition, to encourage the closure of developmental centers, the commissioner will allow the net variable costs associated with the planned reduction of the developmental centers to become part of the operating costs of remaining like facilities. Net variable costs are total variable costs less the sum of that portion of the variable costs that become part of the operating costs of new state operated programs and services and the projected personal service attrition savings, as determined using historical attrition trends over the preceding three years, that occur at the developmental centers. The commissioner will allow reimbursement of these net variable costs as part of a plan to close the developmental centers. This incentive plan would provide for the reimbursement in total of net variable costs in the developmental centers without adjustment or offsets.

- (a) For each rate period, the net variable cost will be calculated based on the number of reduced beds planned for that rate period. 100 percent reimbursement of the net variable cost will be allowed for that rate period.
- (b) Under this incentive plan eligible costs will be limited to personal service costs including fringe benefits and overhead and other than personal service costs excluding capital costs.
- (c) To determine the capital cost portion of the rate, OMRDD shall review the component relating to capital costs for substantial material changes and if said changes conform to the requirements of paragraphs (f)(1) and (3) of this section and subdivision (j) General Rules for Capital Costs and Costs of Related Party Transactions, and subdivision (k) Glossary, make corresponding adjustments in computing the subsequent period rate.

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[(v)] **(vi)** The computation of the rate resulting from the application of this paragraph can also be represented by the following formula:

- (a) trended reimbursable operating costs + untrended reimbursable operating costs + reimbursable capital costs = total reimbursable costs.
- (b) total reimbursable costs / units of service = the rate.

[(vi)] **(vii)** If OMRDD is unable to compute a rate for a newly certified facility, it may establish an interim rate which shall be the regional average for other facilities.

- (a) OMRDD shall replace the interim rate retroactively to the starting date of such interim rate by a rate developed from the initial budget report submitted by the facility.
- (b) The rate developed from the initial budget report shall be subject to all the requirements of this section, and shall be effective for the remainder of the then current rate period.

[(vii)] **(viii)** Since July 1, 1996, providers have been responsible for any necessary transportation to and from physician, dentist, and other clinical services, and any other transportation appropriate to the consumer's participation in community-based out of residence activities planned for or sponsored by the facility. Nothing herein shall be interpreted as precluding the accessing of separate Medicaid claiming for emergency/nonemergency ambulance services (as defined in 18 NYCRR 505.10) necessitated by the consumer's medical condition.

[(viii)] **(ix)** (a) To encourage the closure of developmental centers, the commissioner will consider proposals to allow the variable costs associated with the closed facility or facilities to become part of the operating expenses of new or existing state operated under 31 bed facilities. The commissioner will allow a reasonable incentive plan for the reimbursement of the increased costs in the state operated under 31 bed facilities if it is coupled with the closure of a developmental center. An incentive plan would provide for the reimbursement in total of increased costs in the state operated under 31 bed facilities without adjustment or offsets.

- (i) 100 percent reimbursement of the increased cost for at least one full rate period, but less than two full rate periods.

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- (ii) 75 percent reimbursement of the increased cost for the second full rate period.
 - (iii) 50 percent reimbursement of the increased cost for the third full rate period.
 - (iv) 25 percent reimbursement of the increase cost for the fourth full rate period.
- (b) Costs to be eligible for this incentive plan will include but not be limited to direct care, support and clinical personal service and fringe benefit amounts for employees whose most recent prior employment was at a closed or scheduled to close developmental center.
- (i) In order to have the cost of former developmental center employees included in the incentive plan, the state operated facility applying for a rate adjustment must hire such employee within twelve months of the official closing date of the developmental center.
 - (ii) Salaries and fringe benefit amounts paid to eligible employees by the facility cannot exceed the average salary and fringe benefit amount paid to comparable employees currently on that facility's payroll.
- (c) Incentive plan applications from provider shall be made in writing to the commissioner.
- (i) The application shall identify the employees, their job titles, salary levels, date hired and B/DDSO.
- [(ix)] **(x)** To accelerate the closure and to encourage a reduction in the size of developmental centers, the commissioner will consider proposals to allow the variable costs associated with a developmental center to become part of the operating expenses of new and existing state operated under 31 bed facilities. The variable costs associated with the developmental center will be allowed for the transition which is the period beginning on the date an official announcement to close a facility or facilities and ending on the date of actual closure. Also variable costs associated with the planned conversion of beds which is at least 10 percent change in the facility census will be allowed. The commissioner will allow a reasonable incentive for the reimbursement of the increased costs in the state operated under 31 bed facilities during the transition and/or conversion period. An incentive plan would provide for the reimbursement in total of increased costs in the state operated under 31 bed facilities without adjustments or offsets.